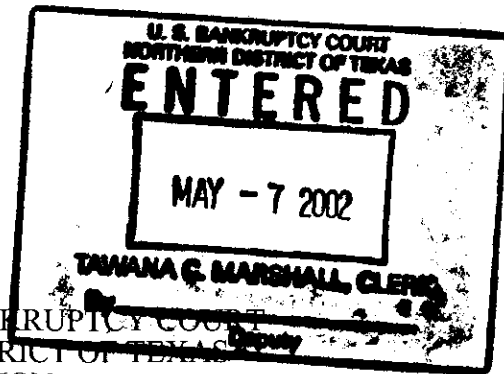


Stewart Ransom Miller  
Legal Services of North Texas, Inc.  
1515 Main Street  
Dallas, Texas 75201-4841



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Case No. 01-35201-RCM-7

Brian Andrew Hersh,

Debtor.

Kerry Lyn Churchill,

Adversary No. 01-3637

Plaintiff,

vs.

Brian Andrew Hersh,

Defendant.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before the Court is the parties' trial on the merits in the above styled adversary proceeding wherein Kerry Lyn Churchill is the Plaintiff and Brian Andrew Hersh, the Debtor in the above styled Chapter 7 proceeding, is the Defendant. In this trial the Plaintiff seeks a determination by the Court that the Defendant's Marital Settlement Agreement obligation to indemnify the Plaintiff from any liability on their University of Kentucky Federal Credit Union Visa Gold Account No. 4046290191006738 is an 11 U.S.C. § 523a(15) nondischargeable marital debt. All parties and/or their attorneys were present. After considering the pleadings, the evidence, the argument and briefs from counsel, the Court, makes its findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable here by Federal Rule of Bankruptcy 7052.

15

## FINDINGS OF FACT

1. On May 18, 1996 the parties were married at Lexington, Kentucky.
2. On January 29, 1999 the parties applied for and secured University of Kentucky Federal Credit Union Visa Gold Account No. 4046290191006738.
3. On March 8, 1999 a Petition for the Dissolution of Marriage of the parties was entered by the Circuit Court of Fayette County, Kentucky.
4. On March 8, 1999 the parties signed their Marital Settlement Agreement, a true copy of which is attached to the Plaintiff's Complaint in this case. Paragraph III on page 3 of the Marital Settlement Agreement says "Husband shall ...indemnify Wife from any liability on ... Federal Credit Union Visa Gold Account No. 4046290191006738."
5. On April 15, 1999 the parties divorce was finalized by the Circuit Court of Fayette County, Kentucky.
6. On November 16, 2001 the Plaintiff was sued by the University of Kentucky Federal Credit Union in Case No. 01-CI-4330 in the Fourth Division Circuit Court of Fayette County, Kentucky to collect the \$14,111.09 principal balance due on the Federal Credit Union Visa Gold Account No. 4046290191006738 and related interest, attorney fees, and costs.
7. The Defendant's obligation to indemnify the Plaintiff "from any liability on ... Federal Credit Union Visa Gold Account No. 4046290191006738" is not of the kind described in 11 U.S.C. § 523(a)(5). However, it is the kind of debt described in 11 U.S.C. § 523(a)(15) as one incurred by the Defendant in the course of a divorce or in connection with a divorce decree or other order of a court of record, a determination made in accordance with State law by a governmental unit.
8. After March 8, 1999 the Defendant continued to use the University of Kentucky Federal Credit Union Visa Gold Account No. 4046290191006738 solely by and for his exclusive benefit.

9. The Defendant has not raised the defenses afforded by 11 U.S.C. § 523(a)(15)(A) and (a)(15)(B).

10. The Defendant made no showing that he does not have the ability to pay his obligation to indemnify the Plaintiff "from any liability on ... Federal Credit Union Visa Gold Account No. 4046290191006738" could not be satisfied by from his income or property not reasonably necessary to be expended for his maintenance or support of the debtor and, if the Defendant is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

11. The Defendant made no showing that discharging his obligation to indemnify the Plaintiff "from any liability on ... Federal Credit Union Visa Gold Account No. 4046290191006738" such debt would not result in a benefit to the debtor that outweighs the detrimental consequences to the Plaintiff.

12. Any finding of fact may be deemed a conclusion of law.

#### **CONCLUSIONS OF LAW**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(a) and 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and b(2)(1) over which the Court may enter a final judgment.

2. Under 11 U.S.C. § 523(a)(15), the burden of proof initially falls upon the Plaintiff to show that her claim falls within purview of subsection (15) by showing that her claim does not fall under 11 U.S.C. § 523(a)(5) and that it was nevertheless incurred by the Defendant in the course of the divorce or in connection with the divorce decree or similar agreement. Once that showing is established, the Plaintiff's claim is excepted from discharge under 11 U.S.C. § 523(a)(15) unless the Defendant can prove that the Plaintiff's claim falls within either of 11 U.S.C. § 523(a)(15)(A) or 523(a)(15)(B), the two exceptions to 11 U.S.C. § 523(a) nondischargeability.

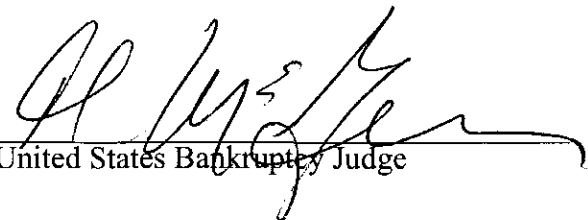
3. The Plaintiff has made a prima facie case against the Defendant under 11 U.S.C. § 523(a)(15).

4. The Defendant's obligation to indemnify the Plaintiff "from any liability on ... Federal Credit Union Visa Gold Account No. 4046290191006738" is nondischargeable 11 U.S.C. § 523(a)(15).

5. Any conclusion of law may be deemed a finding of fact.

6. An Order consistent with these findings of fact and conclusions of law will be entered separately.

Dated: May 7/8, 2002.

  
United States Bankruptcy Judge